

**PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
September 30, 2003**

PLACE: Room 206
Town Hall

TIME: 8:00 P.M.

PLANNING AND ZONING COMMISSION MEMBERS ATTENDING:
Damanti, Spain, Forman, Kenny

STAFF ATTENDING: Ginsberg

Chairman Damanti read the first agenda item:

Continuation of Public Hearing regarding Coastal Site Plan Review #184, Flood Damage Prevention Application #195, Land Filling & Regrading Application #102, Friends of Goodwives River, 33 and 30 Goodwives River Road, and 11 Queens Lane. Proposing to repair the Upper Pond Dam, construct a fish ladder, remove approximately 9,000 cubic yards of sediment and restore aquatic and shoreline habitats of the Upper Pond. The subject properties are located on the Goodwives River and: at 33 Goodwives River Road approximately 500 feet north of its intersection with Old Kings Highway South.

Mr. Damanti noted that this is a continuation of the public hearing from July 22, 2003 and September 23, 2003. Mr. Tom DeSantos of Fuss & O'Neill was present on behalf of the applicant. He noted that the public hearing was continued to allow the public to review the drainage computations which were submitted last week. Mr. DeSantos summarized the project by noting that they are restoring a choked off waterway and eliminating the sediment which is now protruding above the water within the Goodwives River. Mr. Richard Windels, the President of Friends of Goodwives River, then submitted 16 photographs for the record.

Attorney Robert F. Maslan, Jr. was present on behalf of Hart Investment Properties, LLC. He said that he had reviewed the drainage computations from Fuss & O'Neill submitted on September 23rd. Mr. Maslan then submitted a copy of the September 2, 1993 Flood Insurance Study prepared by FEMA and excerpts of the Flood Insurance Rate Map (FIRM) also revised to September 2, 1993 for a portion of Darien. Mr. Maslan noted that there is a discrepancy as to the base flood elevation just upstream of the dam. He said that page 10 of the flood insurance study showed 495 cubic feet per second. This number was used from a location about ½ mile upstream from the project. Mr. Maslan said that on page 20 of the Flood Insurance Study, cross section C is below the dam. Not mentioned in the report is a figure for cross section D. That number is a base flood elevation of 13.5 feet shown on page 20 of the flood insurance study. Fuss & O'Neill claims that the base flood elevation is 14.45 feet. The published map gives an elevation of 13.5 feet. In claiming it is higher, Fuss & O'Neill notes that 14.34 feet is a reduction in the base flood elevation when it is actually higher than the 13.5 foot base flood elevation. Therefore, Mr. Maslan concluded the project does not comply with the Darien Zoning Regulations. This is because any increase in the flood elevation must be zero or less. Mr. Maslan then went on to discuss the possible impacts of the 100 year flood within the flood way. Mr. Maslan believed that there was a serious discrepancy and non-compliance with the Darien Zoning Regulations. He also suggested that there should be a requirement for a bond and that the Planning & Zoning Commission should require a bond in

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addition to the one required by the Environmental Protection Commission (EPC). Mr. Maslan also noted that he has a question regarding the standing of Friends of Goodwives River to bring an application on this matter.

Mr. Maslan explained that Hart Investment Properties LLC owns 2 lots adjacent to the Goodwives River in the A Zone. Any change in elevation will affect their properties whether or not their portion of the property is within a conservation easement. Mr. Spain then asked if the water levels will increase more if the work is not done. Mr. Spain also asked if removal of the silt will have a positive impact on the Hart properties. Mr. Maslan responded that the Fuss & O'Neill report analyzes the impact on the base flood elevation and Mr. Maslan's comments are based upon the entire project. Mr. Damanti asked if the 1993 analysis is the most current available. Mr. Maslan explained that the 1993 analysis is the most current and there is no mention in the Flood Insurance Study of the dam having failed.

Mr. Spain then asked what the proper amount of any performance bond should be. Mr. Maslan responded that the only pond that the Planning & Zoning Commission asserted jurisdiction over is this pond (behind the Hart Properties). Mr. Maslan said that the Commission could set a bond and include a provision that any bond required not be in addition to any other bond required by the Environmental Protection Commission. Mr. Maslan said that case law recognizes interest in properties to file an application including being an owner or a contract purchaser of a property. The applicant needs an interest in the property, and he does not believe that the Friends of Goodwives River has one. Mr. Maslan noted that the Brinkleys accept no responsibility for compliance of the project on their property. He also noted that the applicant did not own an interest in any other property. Mr. Damanti asked if a bond would address any possible enforceability concerns. Mr. Maslan responded that it possibly could.

Mr. Kenny then asked if the dam is rebuilt to its former level, will the adjacent property be any more flooded than it is. Mr. Maslan responded that it would according to the report submitted. Mr. Damanti then asked Mr. Maslan if he is saying that the numbers used by Fuss & O'Neill were erroneous. Mr. Maslan believed that the 14.45 base line is incorrect. He also questioned whether the 495 cubic feet per second number is the appropriate number to use. He believes cross section C is below the dam. He said that the heart of the concern is 13.5 feet on the upstream side of the dam. The Fuss & O'Neill report shows it at 14.45 feet and 14.34 feet after the work is done. He believes that the applicant may need a Letter of Map Revision to revise the flood elevations.

Mr. Damanti then asked what the EPC required for a bond. Mr. Maslan responded that it was EPC's intent to move from pond to pond one at a time and finish one pond before the next has begun. Mr. Maslan also mentioned that he is not sure that the applicant has obtained an easement or license to work on adjacent properties. Mr. Spain then questioned the 495 cubic feet per second number referred to by Mr. Maslan. Mr. Maslan explained that this is on page 10 of the report and this number is upstream of the dam and this number reflects discharging 495 cubic feet per second about a half mile away from the project.

Mr. Phil Moreschi of Fuss & O'Neill responded to Mr. Maslan's concerns. He said that the analyses done by Fuss & O'Neill were done properly and the work to be performed by the Friends of Goodwives River will not cause an increase in the flood level. He said that they have used the

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appropriate numbers for this project. He said that the Flood Insurance Study is based upon the best available information. The length of the spillway and the volume will be the same. There will be no increase in the base flood elevation over existing conditions as represented by recent surveys. The existing conditions analysis finds a higher number than the Flood Insurance Study because they did a more accurate hydraulic analysis. The Flood Insurance Study is based upon the best available information and Fuss & O'Neill did a more detailed survey. The existing conditions will not be aggravated. Mr. Moreschi explained that DEP is requiring a diversion permit for this project and will review Fuss & O'Neill's work for the same reason that the Planning & Zoning Commission is reviewing it. DEP will see the difference between the flood insurance study and the Fuss & O'Neill report. Mr. Kenny then asked how the DEP will reconcile the two different numbers. Mr. Moreschi added that Fuss & O'Neill will explain to DEP how the numbers were arrived at and he was sure that DEP will agree that the Fuss & O'Neill numbers are more accurate than the flood insurance study numbers. DEP may require a Letter of Map Revision from FEMA. Mr. Damanti confirmed that Mr. Moreschi is asking the Planning & Zoning Commission to agree with the calculations done by Fuss & O'Neill rather than the Flood Insurance Study and the Flood Insurance Rate Map prepared by the federal government. Mr. Moreschi responded that Fuss & O'Neill performed a costly and time-consuming procedure to come up with more accurate information. Mr. Damanti then asked how the project complies with Section 825(e) of the Darien Zoning Regulations. Mr. Moreschi said that this project does not include major construction or substantial improvement. The DEP will pass judgment on whether the project complies with flood regulations. If the DEP requires a change in the project and/or the flood map, Mr. Moreschi was agreeable to returning to the Planning & Zoning Commission for further review. Mr. Spain then suggested a possible condition of approval that this project be conditioned on State DEP approval of the submitted plans. If there is any State required change in the plans, the applicant must then return to the Planning & Zoning Commission for the further review of the project.

Mr. Moreschi explained that there is no impact as a result of the proposed activity. The 495 cubic feet per second location is downstream from the dam, and that number is reasonable. Mr. Kenny asked how long it would take for a Letter of Map Revision. Mr. Moreschi explained that it would take up to six months. Mr. Ginsberg then explained the Letter of Map Revision process that is performed by the applicant and not by DEP. Mr. Kenny then asked to have the applicant assist him in understanding the impact of the volume and the rate of flow. Mr. Moreschi said that this project should not impact the shoreline of the pond. Mr. Windels added that the dredging does not increase the flow of Goodwives River and the shoreline will not change. Mr. Moreschi explained that any failure of the dam could cause damage downstream, and he referred to Section 22a-410 of the Connecticut General Statutes that addresses this area. Mr. Windels explained that EPC required that the ponds be dredged in sequence. The performance bond must cover the maximum value of each pond. He explained that "Friends Of" organizations were formed just for this type of purpose. Mr. Windels added that the Brinkleys own property that would be used for access to the pond. Mr. Kenny then asked who owns them. Mr. Windels responded that Carol Smith of 36 Goodwives River Road owns most of the dam, and Hart Investment Properties owns a small section of the dam along the eastern bank. Mr. Windels explained that they will have a wier board which is what has collapsed. Mr. Spain confirmed that all work will be done on the western part of the dam and no work will be done on the Hart property. Mr. Windels agreed.

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There being no other questions or comments from the Commission members or the general public, the public hearing on this matter was then closed at 9:40 p.m.

The Commission then moved into a General Meeting and Mr. Damanti read the first item.

Amendment to Zoning Map, Robert & Suzanne Cottle, 154 Christie Hill Road. Proposing to amend the Darien Zoning Map by moving the boundary between the R-1 and R-2 zones in the vicinity of Christie Hill Road and Halter Lane. The subject property is located on the south side of Christie Hill Road approximately 500 feet west of its intersection with Hollow Tree Ridge Road and is shown on Tax Assessor's Map #28 as Lot #27, R-2 & R-1 Zones.

Mr. Damanti noted that there are only four out of the six Commission members present this evening and two members are not present. He then explained that this makes any discussion on this matter difficult. With barely a quorum present, it would be unfair for the Commission tonight to discuss what appeared to be a controversial application. Mr. Damanti said that it could be a mistake to discuss it tonight and it would be more prudent to put off any discussion until October 7th. The other three Commission members present agreed, and Mr. Ginsberg will put this item on for discussion on the October 7th P&Z agenda.

Mr. Damanti then read the next agenda item:

Business Site Plan #184-B/Special Permit, Rory's Restaurant, 416 Boston Post Road. Proposing to modify the existing restaurant by adding onto the existing kitchen, modifying the access drive and parking, and perform related site development activities.

Mr. Damanti said that the project as proposed meets the health code, and somewhat improves the existing parking situation. It is also a general improvement to the overall site. Ms. Forman agreed with Mr. Damanti's statements. Mr. Spain said that formal parking arrangement with the neighbors were brought up during the public hearing and he noted that they will assist in resolving parking issues. Mr. Ginsberg was then instructed to prepare a draft resolution for the Commission's review at their October 7th meeting.

Mr. Damanti then read the next agenda item:

Coastal Site Plan Review #187, Land Filling & Regrading Application #107, Richard & Robin Woods, 137 Five Mile River Road. Proposing to demolish existing residence and garage, and construct a new single-family residence and garage; construct a garage/workshop; install septic system galleries; repair an existing seawall, install walkway to dock, and perform related site development activities within a regulated area.

Mr. Ginsberg then outlined the comments submitted by the State of Connecticut DEP. Mr. Kenny mentioned that he was very concerned about overdevelopment of the property. Commission members briefly reviewed the plans and Mr. Damanti mentioned that there is a sink but no cooking facilities in the detached one story garage. Mr. Ginsberg was instructed to have a draft resolution prepared for the October 7th or October 14th meeting for the Commission's review.

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Approval of Minutes

September 2, 2003 General Meeting

On a motion by Mr. Damanti, seconded by Ms. Forman, the September 2, 2003 General Meeting minutes were unanimously approved as written.

September 9, 2003 General Meeting

On a motion by Mr. Kenny, seconded by Ms. Forman, the September 9, 2003 General Meeting minutes were unanimously approved as written.

There being no other business, the meeting was then adjourned at 10:00 p.m.

Respectfully submitted,

Jeremy B. Ginsberg
Planning and Zoning Director

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